

P E T I T I O N

For the Earl of Southesk,

Against

Sir John Murray of Drumcairn, and others.

MY Lords of Council and Session, Unto your Lordships shews, *Charles Earl of Southesk* : That where the Deceast Countes of *Errol* my Fathers Sister, and my Lord *Drumcairn*, taking Advantage of my Fathers Indisposition and Sicknes, when he was affected with a malignant Fever, whereof he died the next day, prevailed with him to consent to the granting of a Bond for Sixty Thousand Pounds *Scots* to her, without any Shadow of a just Cause, but meerly on Jealousies (which now evidently appear to have been without all Ground) suggested by them to my Father, that I might Endanger the Ruine of his Family and Estate, if, to restraine me from following my Mothers Advice, and from allowing her the Management of my Fortune, I were not ingaged for a vast Sum, in a Bond to be intrusted to her, to be made use of for that Design allanerly, but no part of it ever to be exacted. And Sir *John Murray of Drumcairn* being not only Privy to this Project, but the Contriver thereof, a Lawer and a Lord of the Session. Advited that the Obligation would not stand good in Law, unless I, my Fathers Appearand Heir, were bound in it. Upon this Advice, a Bond was drawnen up, without my Knowledge, or the Knowledge of any of my Friends, and (on a *Saturndays* Night, about Mid-night) I was called in to Sign the Bond, being keepe out until it was so framed, without any previous Advertisement ; and in the mean time, the Relations of my Family, particularly Sir *David Carnagy of Pittaraw*, and Doctor *Charles Carnagy* Dean of *Breichen* his Brother, were keepe at the Door, and not suffered to come in, though they desired Access. The whole Matter being a Surprise to me, and my Father being in extream Agony, and so Austere, that it is known, he frequently before, on trivial Matters, did threaten me so, as I durst not Disobey him, on the Peril of my Succession, if he had Survived, I did Sign, being peremptorly so commanded by my Father ; but I not only shew a visible Reluctance, but delivered not the Bond, until the Countes of *Errol* did declare to me, (as she did frequently since to others, of all Ranks, in this Kingdom, and elsewhere,) that she took it only to be a Token of my Fathers Kindnes and Trust to her, and assured me that she would never exact one Groat of it ; and being so encouraged by my Ladies Engagement, and considering also, that she was a person of Honour, and that I hoped she would not suppress her Fathers Family, I did not withstand longer, in the Circumstances I stood ; being still keepe in my Fathers Presence, and my Friends restrained from Acces to him or me.

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The Bond being thus elicit, I was loath to disoblige my Aunt in her own time, and besides I was her Appearand Heir, and Nearest of Kin, and so had the hope of Succession; but understanding, after my Ladies Decease, that my Lord *Drumcairn*, and others, claimed Interest in the said Bond, by several Deeds from her, and that I am wholly excluded; I have railed Reduction and Improbation of the Bond, and Conveyances thereof, in which the Terms are run; but the Defenders delaying the Production of the Conveyances, whereby I cannot come to bring my Process to be Determined this Session. And seing I have not only already lost my Mean of Probation by the Countess (now Deceased) her Oath, but the Lord *Drumcairn*, who was a Contriver of the Project, and a Witness to the Bond, is now become Creditor, by a Conveyance from the Countess, in the Bond; whereby I will want his Oath as a Witness, and thereby there remains only one Subscribing Witness, and two Persons more, who were then Servants, and present at the Subscribing and Delivering; by whose Testimonies alone it is possible for me to prove the clos manner of preparing that Bond, and the bringing me in the Room by a Trap, and Detaining me as Prisoner until I gave full Obedience to the Commands of my dying Father. As also these Witnesses, and Sir *David Carnegie* of *Pittarrow*, are the only Persons (his Brother the Dean of *Brechin* being now dead, as also *James Carnegie* of *Newgate*, who wasthen with them at the Door) who can prove how my Friends were keeped out, and denied Access at the time when the Trap was preparing for me, and when I was brought unto it. And lest my Mean of Probation may perish during the lingering Delays of an Improbation, wherein after the Formalities of Proces are over, the Case can never be determined, to the Satisfaction of either Party, but by a Hearing in your own Presence: It is therefore most just that necessary Witnesses be examined, that their Depositions may ly *in retentis*, and that my Probation be not irrecoverably lost, and my Family Endangered to be supprest, if they should die during the Dependance.

I hope I need not use many words to perswade your Lordships to grant this my Reasonable Desire; If Testimonies had never been taken in any case to ly *in retentis*, I should not have Applied, but seing your Lordships are frequently in use to allow Probations to be received in that manner, I may boldly say, that no Case ever did more merit your Lordships favour: for though all the Circumstances of eliciting the Bond do not yet appear, yet the best View that the Action can receive is so odious, that I am very hopeful, none that pretend Right to it, will in Honour and Conscience pretend to exact it, though my Probation should Perish: However the Creditors who ought to produce, will for shame, use all Delays: and in Proces of Time they may become more hardned, or the Right may fall to onerous Successors.

May it therefore please your Lordships to preserve my Mean of Probation against Humane Frailty, by taking the Depositions of the Witnesses, whose Names are contained in a Condescendance herewith produced, that the samen may ly *in retentis* until the Event of the Cause. According to Justice, and your Lordships Answer.